IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Date of Reserving Judgment 21.11.2017 | Date of pronouncing Judgment 06.02.2018 |
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CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Writ Appeal No.651 of 2016 and
C.M.P.No.8347 of 2016

1 STATE OF TAMIL NADU
REP. BY THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT
SECRETATIAT, FORT ST. GEORGE
CHENNAI-600 009

2 THE COMMISSIONER OF LAND ADMINISTRATION
CHEPAUK, CHENNAI-600 005

3 THE ASSISTANT COMMISSIONER
(URBAN LAND TAX)-COMPETENT AUTHORITY
POONAMALLEE, CHENNAI

4 THE DISTRICT COLLECTOR
THIRUVALLUR DISTRICT, THIRUVALLUR

5 THE TAHSILDAR
AMBATTUR, CHENNAI.

6 THE VILLAGE ADMINISTRATIVE OFFICER
MADURAVOYAL
CHENNAI-600 095 ... APPELLANTS

..Vs..

M/S TECHNOLAB INSTRUMENTS (MADRAS)
REP. BY ITS PROPRIETOR
L.N. SRIDHARAN
18/1A2 POONAMALLEE HIGH ROAD
MADURAVOYAL,
CHENNAI 600 095. ... RESPONDENT

Writ Appeal has been filed under clause 15 of Letters Patent against the order of this Court dated 30.07.2013 made in W.P.No.36796 of 2004.

PRAYER IN WP.36796 OF 2004:

Writ Petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorarified mandamus calling for the Records of the 1st Respondent comprised in G.O.Ms.No.549 Revenue Department dated 15.05.1992 and quash the same and consequently forbear the respondents from in any manner interfering with the peaceful possession and enjoyment of the property belonging to the petitioner situate at S.N.18/1a2, poonamallee High Road, Maduravoya, ambattur taluk, Tiruvallur District.

For Appellants : Mrs.A.Sri Jayanthi
Special Government Pleader

For Respondent : Mr.Raghul Balaji
for Mr.R.Parthasarathy

J U D G M E N T

P.VELMURUGAN,J.

This Writ Appeal has been filed by the Government challenging the order of this Court dated 30.07.2013 made in W.P.No.36796 of 2004.

2. The brief facts of the case are as follows:-

(i) The subject land measuring an extent of 0.49 ares comprised in S.No.18/1A2 at Maduravoyal Village, Ambattur Taluk, was originally owned by one Mr.P.V.K.Swamy. The respondent is a company governed by the Companies Act. The respondent entered into a sale agreement with the erstwhile owner in the year 1975. According to the respondent, the possession was handed over to the Company in the year 1975 itself. While so, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (herein after referred as Principal Act) was introduced on 17.05.1978. The respondent purchased the said property by means of a registered sale deed dated 26.12.1981 and continued to be in possession of the same.



(ii) While so, a draft statement under Section 9(4) of the Principal Act was issued on 07.11.1985 against Mr.P.V.K.Swamy calling upon him to submit his objections for the proposed acquisition of 10,950 sq.mtrs after allowing 2500 sq.mtrs towards entitlement and 400 sq.mtrs for road usage. The said notice was served on Mr.P.V.K.Swamy on 07.11.1985 and thereafter, the appellants issued an erratum to the said statement by revising the excess vacant land as 10,050 sq.mtrs and accordingly, an order was issued on 12.12.1985 under Section 9(5) of the Principal Act.

(iii) The respondent on receipt of information with respect to the proceedings submitted an application to the third appellant on 23.01.1986 seeking exemption of the said land from acquisition as per Section 21 of the Principal Act. However, final statement under Section 10(1) of the Principal Act was issued by the third appellant on 23.01.1986 and notification was issued under Section 11(1) of the Principal Act on 24.04.1987. The notification was published in the Tamil Nadu Government Gazette on 20.05.1987.

(iv) Subsequently, under order in G.O.Ms.No.30 dated 07.01.1988, the request of the respondent dated 23.01.1986 seeking exemption was rejected. A notification under Section 11 (3) of the Principal Act was issued on 19.08.1988 vesting the land in the Government with effect from 15.10.1988. The said notification under Section 11(3) of the Principal Act was published in the Government Gazette on 12.10.1988.

(v) Subsequently, a notice under Section 11(5) of the Principal Act was issued to Mr.P.V.K.Swamy calling upon him to hand over vacant possession of the land, which stood vested with the Government. But, Mr.P.V.K.Swamy submitted a letter stating that he was not in possession of the property, as he had sold the land to various persons including the respondent. In the said letter, Mr.P.V.K.Swamy, had stated that on several occasions, he had sent letters stating that he had sold away all the properties and he was not in possession of the same so as to hand over possession to the Government. According to the respondent, the industry has been in possession and enjoyment of the property all through and physical possession was not at all taken by the Government in accordance with Section 11(6) of the Principal Act.

(vi) The respondent had requested the Government to allot the land in question to the industry as by that time, the land stood vested with the Government. The Government examined the said proposal under Section 24 of the Principal Act r/w. Rule 23 of the Rules, 1978 and accordingly, a decision was taken to allot the land to the respondent on certain conditions and thus, issued G.O.Ms.No.549, Revenue Department, dated 15.05.1992. One of the conditions is that the respondent shall pay 1 ½ times the market value of the land as the land value and for the value of trees, wells and structures if any. The respondent was aggrieved by the above condition and some other conditions imposed by the Government. Therefore, challenging the said Government Order, the respondent has filed the Writ Petition before this Court.

(vii) The learned single Judge, after hearing elaborate submissions made by the learned counsel for both sides and considering the material records, came to the conclusion that the impugned order under G.O.Ms.No.549, Revenue Department, dated 15.05.1992, allotting the land to the respondent under Section 24 of the Principal Act, stands lapsed and the same is non-est in the eye of law after 16.06.1999 and the Writ Petition has become infructuous as no further adjudication is required in respect of the impugned Government Order. Further the learned single Judge held that the title to the property in question stands restored to the respondent herein and therefore, as on the date, the respondent has got title.

(viii) Aggrieved by the order passed by the learned single Judge, the Government has filed the present Appeal.

3. During the course of arguments, We have directed the Special Government Pleader to produce the original files. Accordingly, the Government have produced the original files for our perusal.

4. We have heard the learned counsel for the parties.

5. The undisputed facts are that the property measuring an extent of 0.49 ares comprised in S.No.18/1A2 at Maduravoyal Village, Ambattur Taluk, originally belonged to Mr.P.V.K.Swamy. The Principal Act came into force on 17.05.1978. The urban land owner has to submit Form-I statement under Section 7(1) of the Principal Act. After submitting the statement, the competent authority has to consider the same and declare the excess urban land possessed by the land owner after deducting the extent as per his entitlement. In this case, the erstwhile owner Mr.P.V.K.Swamy filed the statement. Originally, the land owner claimed exemption on the ground that the lands are agricultural lands. After verification, it was found that the land was not agricultural land and therefore, his request for exemption was rejected. Subsequently, Mr.P.V.K.Swamy informed the competent authority that he had sold the land to the respondent and other persons on 26.12.1981. He has stated that the possession was handed over to the purchaser ie., respondent herein. The respondent herein had also filed a statement seeking exemption, but the same was also rejected. Further, the respondent - M/s.Technolab Instruments had filed representation before the Government to allot the land in its favour and agreed to abide by any of the conditions imposed by the Government. Accordingly, the said work was entrusted to the allotment committee. The said committee, after examining in detail in the meeting held on 26.12.1990, had also recommended for allotment

of the land to the respondent. The Government, after examining the said proposal under Section 24 of the Principal Act, decided to allot the land to the respondent on certain conditions, as per G.O.Ms.No.549, Revenue Department, dated 15.05.1992. One of the condition is that the respondent herein shall pay 1 ½ times the market value of the land, as the cost of land and for the value of trees, wells and structures if any. The respondent aggrieved by the above condition and some other conditions imposed by the Government, has filed the writ petition.

6. The respondent has filed a statement and representation for exemption which was rejected. Subsequently, the respondent filed another representation on 21.05.1990 for allotment to the Government and thereby, the industry accepted the acquisition. The prayer sought for in the representation dated 21.05.1990 is extracted hereunder:-

> "....... the above said land may be retained by allotting the same to us to develop our industry. We shall abide by the conditions of the Government for allotment and we will pay the cost of land if any in full and also we intend to utilise the entire extent of the land as soon as the allotment made."

After considering the same, the Government has also allotted the land to the respondent. The respondent failed to comply with the conditions imposed by the Government, as undertaken in the representation.

7. It is useful to extract sub-section 3 of Section 11 of the Principal Act:-

> "11 (3) At any time after the publication of the notification under sub-section (1), the competent authority may, by notification in the Tamil Nadu Government Gazette, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified."

It is clear from the above provision that after the issuance of Section 11(3) notification, the land stood vested in the Government.

8. The Hon'ble Apex Court in a batch of cases, reported in 2013 (4) SCC 280 (State of Uttar Pradesh ..vs.. Hari ram), held that "The expression 'deemed to have been acquired' used as a

deeming fiction under sub-Section (3) of Section 10 can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held that vacant land or to possess such land as owner or as a tenant or as mortgagee and so on as defined under Section 2(i) of the Act.”

9. According to the respondent, since the erstwhile land owner Mr.P.V.K.Swamy sent the representation that he had sold the property to the respondent and others and the property is in the hands of the purchaser and therefore, he is not in a position to hand over the possession, the question of taking possession by the Government does not arise in this case.

10. Insofar as the above contention of the respondent is concerned, it is found that even in the year 1989, much before the Repeal Act coming into force, the respondent made a representation before the Government for allotment of the subject land. It is therefore clear that with eyes open, the respondent accepted the title of the Government. The respondent surrendered the legal possession and therefore, request was made for allotment. Having admitted the fact that the land is an urban land and is part of excess land acquired from Mr.P.V.K.Swamy and that the sale was effected after the Urban Land (Ceiling and Regulation) Act, 1978 coming into force and therefore, the sale is null and void, the respondent filed a representation before the Government for allotment of the said land.

11. Taking advantage of the Repeal Act 20/1999, the respondent now claims that as per the Repeal Act, all the proceedings would abate. In so far as the said plea of abatement under Repeal Act 20/1999 is concerned, the same is not applicable to the present case. The respondent is not entitled to get the benefit of the Repeal Act. In case, the original owner is in continuous possession of the property or any person so on as defined under Section 3(1) of the Act are in possession and if they have not handed over the possession after serving notice under Section 11(5) of the Principal Act and the Government has not taken the possession under Section 11(6) of the Principal Act on or before the date of Repeal Act 20/1999 coming into force or any proceedings in this regard is continuing, then that proceedings would abate. Whereas in this case, the land was originally owned by Mr.P.V.K.Swamy and the land was declared as urban land. Admittedly, when the Principal Act was in force the sale was effected in the year 1981. As per Section 6 of the Principal Act, the sale is not valid and therefore, the respondent has no title over the property. Moreover, the respondent has also made a representation for exemption and his representation was rejected and the same was

not challenged before the appellate authority and therefore, the respondent has been treated as a trespasser. The respondent also accepted the declaration of surplus land and made a representation before the government for allotment of the land.

12. A perusal of the entire records would show that the respondent, on realising the above facts, made several representations for exemption by stating various reasons. At the time of purchasing the land it was a vacant land. It was not an agricultural land nor it would come under any of the exemption clause under any of the provisions of the Principal Act. The respondent stated that subsequent to the purchase of the land, they put up a plant, building and unit etc., As requested by the respondent, after considering the facts and circumstances of the case, the Government rejected the claim of exemption and allotted the land to them on certain conditions. But they have not accepted the conditions and filed the Writ Petition. While the Writ Petition was pending, Repeal Act came into force. Hence, it was contended that as per the Repeal Act, the proceedings stood abated.

13. There were no proceedings pending before the statutory authorities as on the date of Repeal Act so as to grant the relief prayed for by the respondent. Therefore, the order passed by the learned single Judge is liable to be set aside and accordingly, the same is aside.

14. In view of the above discussion, the Writ Appeal is allowed. The order of this Court dated 30.07.2013 made in W.P.No.36796 of 2004 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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TO

1 THE SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT
SECRETATIAT, FORT ST. GEORGE
CHENNAI-600 009

2 THE COMMISSIONER OF LAND ADMINISTRATION
CHEPAUK, CHENNAI-600 005

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MADURAVOYAL
CHENNAI-600 095

+1cc to Mr.R.PARTHASARATHY, Advocate, S.R.No. 9234
+1cc to the Government Pleader, S.R.No. 9409

Pre-delivery Judgment in
Writ Appeal No.651 of 2016

KGK(CO)
TR(22/02/2018)